

AMENDED IN ASSEMBLY SEPTEMBER 2, 2003

AMENDED IN ASSEMBLY JUNE 27, 2003

AMENDED IN SENATE MAY 7, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 1005

Introduced by Senator Dunn

February 21, 2003

An act to amend Sections 1279, 1280, 1280.1, and 1280.2 of, ~~and~~ to add Section 1279.1 to, *and to add an article heading immediately preceding Section 1277 of*, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1005, as amended, Dunn. Fees: inspections: deficiencies: corrections.

Under existing law, a “health facility” means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical and mental, as specified, and includes, among others, general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined. These facilities are regulated by the State Department of Health Services. A violation of the law relating to health facilities is a misdemeanor.

Existing law contains provisions with respect to the inspection of, and the issuance of *deficiency* citations against, general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined.

Existing law also establishes procedures with respect to the identification and correction of deficiencies or the upgrading of quality of care provided by these health facilities.

This bill would make various changes with respect to those provisions:

~~This procedures.~~ This bill, in addition, would establish complaint procedures for complaints involving health facilities, as specified.

~~This bill would make various changes to those provisions:~~

~~Existing law states it is the intent of the Legislature that nothing in specified sections of law shall be construed to require the retrofitting of hospital buildings built prior to January 1, 1994, to meet seismic standards in effect on that date.~~

~~This bill would change that date to January 1, 2004.~~

Existing law requires each health facility to pay an annual fee, as specified, with each new and renewal application for a license.

This bill would provide that the activities of the department in implementing the bill shall be funded through fees collected pursuant to this provision.

This bill would provide that its provisions shall become operative on July 1, 2004.

Because a violation of the provisions of the bill would constitute a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *An article heading is added to Chapter 2 of*
- 2 *Division 2 of the Health and Safety Code immediately preceding*
- 3 *Section 1277, to read:*
- 4



Article 3.5. *Other Licensing Provisions*

SEC. 2. Section 1279 of the Health and Safety Code is amended to read:

1279. (a) Every health facility for which a license or special permit has been issued, except a health facility, as defined in subdivisions (b) to (k), inclusive, of Section 1250, that is certified to participate either in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or in the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et seq.) of the federal Social Security Act, or both, shall be periodically inspected by a representative or representatives appointed by the state department, depending upon the type and complexity of the health facility or special service to be inspected.

(b) If the health facility is deemed to meet standards for certification to participate in either the Medicare program or the medicaid program, or both, because the health facility meets the standards of an agency other than the federal Centers for Medicare and Medicaid Services, then, in order for the health facility to qualify for the exemption from periodic inspections provided in this section, the inspection to determine whether the health facility meets the standards of an agency other than the Centers for Medicare and Medicaid Services shall include participation by the California Medical Association to the same extent as it participated in inspections as provided in Section 1282 prior to the operative date of this section, under Senate Bill 1779 of the 1991–92 Regular Session.

(c) Except as provided in subdivision (d), inspections shall be conducted no less than once every two years and as often as necessary to ensure the quality of care being provided.

(d) For a health facility specified in subdivision (a) or (b) of Section 1250, inspections shall be conducted no less than once every three years, and as often as necessary to ensure the quality of care being provided.

(e) During the inspection, the representative or representatives shall offer the advice and assistance to the health facility that they deem appropriate.

(f) For acute care hospitals of 100 beds or more, the inspection team shall include at least a physician, registered nurse, and persons experienced in hospital administration and sanitary

1 inspections. During the inspection, the team shall offer the advice
2 and assistance to the hospital that it deems appropriate.

3 (g) The department shall ensure that a periodic inspection
4 conducted pursuant to this section is not announced in advance of
5 the date of the inspection. An inspection may be conducted jointly
6 with inspections by entities specified in Section 1282. However,
7 if the department conducts an inspection jointly with an entity
8 specified in Section 1282 that provides notice in advance of the
9 periodic inspection, the department shall conduct an additional
10 periodic inspection that is not announced or noticed to the health
11 facility.

12 (h) Notwithstanding any other provision of law, for a health
13 facility licensed pursuant to subdivision (a), (b), or (f) of Section
14 1250, the department shall inspect for compliance with Section
15 1276.4 during a state or federal periodic inspection, including, but
16 not limited to, an inspection required under this section. This
17 inspection requirement shall not limit the department's authority
18 in other circumstances to cite for violations of Section 1276.4 or
19 to inspect for compliance with Section 1276.4.

20 SEC. 3. Section 1279.1 is added to the Health and Safety
21 Code, to read:

22 1279.1. (a) (1) ~~Upon receipt of a written or oral complaint~~
23 ~~involving a health facility licensed pursuant to subdivision (a), (b),~~
24 ~~or (f) of Section 1250, the department shall assign an inspector to~~
25 ~~make a preliminary review of the complaint, and shall notify the~~
26 ~~complainant within two working days of the receipt of the~~
27 ~~complaint of the name of the inspector. Unless the department~~
28 ~~determines that the complaint is willfully intended to harass a~~
29 ~~licensee or is without any reasonable basis, it shall conduct an~~
30 ~~onsite inspection or investigation within 10 working days of the~~
31 ~~receipt of the complaint. In any case in which the complaint~~ *In any*
32 *case in which a written or oral complaint involving a health facility*
33 *licensed pursuant to subdivision (a), (b), or (f) of Section 1250*
34 *involves a matter that creates a threat of imminent danger of death*
35 *or serious bodily harm, the department shall make an onsite*
36 *inspection or investigation within 24 hours 48 hours or two*
37 *business days, whichever is greater, of the receipt of the complaint.*
38 *In any event, the complainant shall be promptly informed of the*
39 *department's proposed course of action and of the opportunity to*
40 *accompany the inspector on the inspection or investigation of the*

1 *health* facility. Upon the request of either the complainant or the
2 department, the complainant, or a family member or other
3 representative of the complainant, or both, may be allowed to
4 accompany the inspector to the site of the alleged violations during
5 his or her tour of the *health* facility, unless the inspector determines
6 that the privacy of any patient would be violated or the health or
7 safety of the patient would be at risk.

8 (2) When conducting an onsite inspection or investigation
9 pursuant to this section, the department shall collect and evaluate
10 all available evidence and may issue a ~~citation~~ *deficiency* based
11 upon, but not limited to, all of the following:

12 (A) Observed conditions.

13 (B) Statements of witnesses.

14 (C) ~~Facility~~ *Health facility* records.

15 ~~(3) Within 10 working days of the completion of the complaint~~
16 ~~investigation, the~~

17 (3) *The* department shall notify the complainant and licensee in
18 writing of the department's determination as a result of the
19 inspection or investigation.

20 (b) (1) When the department provides notice pursuant to
21 paragraph (3) of subdivision (a), the department shall notify the
22 complainant of the right to an informal conference.

23 (2) A complainant who is dissatisfied with the department's
24 determination regarding a matter that would pose a threat to the
25 health, safety, security, welfare, or rights of a patient may, within
26 ~~five working~~ *business* days after receipt of the notice, notify the
27 director in writing of his or her request for an informal conference.
28 The informal conference shall be held with the designee of the
29 director for the county in which the health facility that is the
30 subject of the complaint is located. The health facility may
31 participate as a party in the informal conference. The director's
32 designee shall notify the complainant and licensee of his or her
33 ~~determination within 10 working days after the informal~~
34 ~~conference and shall notify the complainant and licensee in writing~~
35 ~~of the appeal rights provided in subdivision (c).~~

36 ~~(c) If the complainant is dissatisfied with the determination of~~
37 ~~the director's designee, the complainant may, within 15 days after~~
38 ~~receipt of this determination, notify in writing the Deputy Director~~
39 ~~of the Licensing and Certification Division of the department, who~~
40 ~~shall assign the request to a representative of the Complainant~~

~~1 Appeals Unit for review of the facts that led to the determination.
2 As a part of the Complainant Appeals Unit's independent
3 investigation, and at the request of the complainant, the
4 representative shall interview the complainant in the district office
5 where the complaint was initially referred. Based upon this review,
6 the Deputy Director of the Licensing and Certification Division of
7 the department shall make his or her own determination and notify
8 the complainant and the health facility within 30 days.~~

~~9 (d) determination.~~

10 (c) For purposes of this section, "complaint" means any oral
11 or written notice to the department, other than a report from the
12 health facility, of an alleged violation of applicable requirements
13 of state or federal law or an allegation of facts that might constitute
14 a violation of applicable requirements of state or federal law.

15 SEC. 4. Section 1280 of the Health and Safety Code is
16 amended to read:

17 1280. (a) The department may provide consulting services
18 upon request to any health facility in order to assist in the
19 identification or correction of deficiencies or in the upgrading of
20 the quality of care provided by the health facility.

21 (b) (1) The department shall notify the health facility of all
22 deficiencies in its compliance with this chapter and of the rules and
23 regulations adopted hereunder, and the health facility shall agree
24 with the department upon a plan of correction that shall give the
25 health facility a reasonable time to correct these deficiencies. ~~The~~

26 (2) ~~The~~ time given to a health facility licensed pursuant to
27 subdivision (a), (b), or (f) of Section 1250 to correct the
28 deficiencies may not exceed 180 calendar days. ~~The~~

29 (3) (A) ~~The~~ health facility may request an extension of the
30 period of time within which to correct the deficiencies, except for
31 a violation of Section 1276.4 or any other staffing requirement.
32 ~~This request shall be in writing and shall state facts sufficient to
33 demonstrate good cause for the extension and that patients will not
34 be exposed to a significant hazard if the extension is granted. The~~

35 (B) ~~The request for an extension shall be in writing.~~

36 (C) ~~The request for an extension shall include a statement of
37 facts justifying the extension and a plan for the use of alternative
38 concepts, means, procedures, techniques, or equipment, or the
39 personnel qualifications that will be employed for the provision of
40 safe and adequate care of patients.~~

1 (D) *The request shall be received by the department not less*
2 *than 60 days prior to the expiration of the time within which the*
3 *health facility is required to correct the deficiencies. The*

4 (4) (A) *The department may approve the request for an*
5 *extension of time if the department finds that the extension is for*
6 *good cause and that no patient will be at risk of significant hazard*
7 *if the extension is granted. determines that the plan provided*
8 *pursuant to subparagraph (C) of paragraph (3) ensures the safe*
9 *and adequate care of patients, and that the health facility is unable*
10 *to correct the deficiency within the previously specified time.*

11 (B) *The department shall, in writing, specify the terms and*
12 *conditions under which the extension is granted.*

13 (5) *If the department grants an extension, the department shall*
14 *provide to the original complainant or his or her representative*
15 *notice of the extension 30 days prior to the date required for*
16 *implementation of the plan for of corrections. If at the end of the*
17 *allotted time, as revealed by inspection, the health facility has*
18 *failed to correct the deficiencies, the director may take action to*
19 *revoke or suspend the license.*

20 (c) ~~(4)~~ *In addition to subdivision (a), if the health facility is*
21 *licensed under subdivision (a), (b), or (f) of Section 1250, and if*
22 *the health facility fails to implement, within a reasonable time, a*
23 *plan of correction that has been agreed upon by both the health*
24 *facility and the department, the department may order*
25 *implementation of the plan of correction previously agreed upon*
26 *by the health facility and the department. The time given to the*
27 *health facility to implement the plan of correction may not exceed*
28 *180 calendar days. The facility may request an extension of the*
29 *period of time within which to implement the plan of correction,*
30 *except for a violation of Section 1276.4 or any other staffing*
31 *requirement. This request shall be in writing and shall state facts*
32 *sufficient to demonstrate good cause for the extension and that*
33 *patients will not be exposed to a significant hazard if the extension*
34 *is granted. The request shall be received by the department not less*
35 *than 60 days prior to the expiration of the time within which to*
36 *implement the plan of correction. The department may approve*
37 *the request for an extension of time if the department finds that the*
38 *extension is for good cause and that no patient will be at risk of*
39 *significant hazard if the extension is granted. If the department*
40 *grants an extension, the department shall provide to the original*

~~complainant or his or her representative notice of the extension 30 days prior to the date required for implementation of the plan for corrections. If the facility~~

~~(d) (1) If a health facility licensed under subdivision (a), (b), or (f) of Section 1250 and the department fail to agree upon a plan of correction within a reasonable time, which may not exceed 60 days, and if the deficiency poses a significant hazard to the health or safety of an immediate jeopardy to a patient or patients, then the director may take action to order implementation of a plan of correction devised by the department. The order shall be in writing and shall contain a statement of the reasons for the order. If the~~

~~(2) If the health facility does not agree that the deficiency poses a significant hazard to the health or safety of patients, or if the an immediate jeopardy to a patient, or if the health facility believes that the plan of correction will not correct the hazard, or if the deficiency, or if the health facility proposes a more efficient or effective means of remedying the deficiency, the health facility may, within 10 days of receiving the plan of correction from the department, appeal the order to the director or his or her designee. The director or his or her designee shall review information provided by the health facility, the department, and other affected parties and, within a reasonable time, shall render a decision in writing that shall include a statement of reasons for the order. During the period in which the director or his or her designee is reviewing the appeal, the order to implement the plan of correction shall be stayed. The opportunity for appeal provided pursuant to this subdivision paragraph shall not be deemed to be an adjudicative hearing and is not required to comply with Section 100171.~~

~~(2) If~~

~~(e) (1) In addition to any action taken by the department pursuant to subdivision (c) or (d), or both, if any condition within a health facility licensed under subdivision (a), (b), or (f) of Section 1250 poses a significant hazard to the health or safety of patients, or if completion of a plan of correction for a significant hazard has not been documented by the department within the agreed period of time for the implementation of the plan of correction, an immediate jeopardy to a patient or patients, the department may order either one or more of the following until the hazardous condition deficiency is corrected:~~

1 (A) A reduction in the number of ~~patients or a~~ *patients*.

2 (B) A ban on the admission of patients.

3 ~~(B)~~

4 (C) The closure of all or part of the *health* unit or units within
5 the facility that pose the risk. If the unit to be closed is an
6 emergency room in a designated *health* facility, as defined in
7 Section 1797.67, the department shall notify and coordinate with
8 the local emergency medical services agency.

9 ~~(3) The~~

10 (2) *The health* facility may appeal an order pursuant to
11 ~~paragraph (2) subparagraph (C) of paragraph (1)~~ by appealing to
12 the superior court of the county in which the *health* facility is
13 located.

14 ~~(4) Paragraph (2)~~

15 (3) *Subparagraph (C) of paragraph (1)* shall not apply to a
16 deficiency for which the *health* facility was cited prior to ~~January~~
17 *July 1, 2004*.

18 ~~(d)~~

19 (f) Reports on the results of each inspection of a health facility
20 shall be prepared by the inspector or inspector team and shall be
21 kept on file in the department along with the plan of correction and
22 health facility comments. The inspection report shall include a
23 recommended date for reinspection in order to ensure compliance
24 with the plan of correction. The reinspection may not be more than
25 180 days after the citation of deficiency. A reinspection may be
26 conducted during a periodic inspection required pursuant to
27 Section 1279 *or pursuant to any other inspection conducted by the*
28 *department*. Inspection reports of an intermediate care
29 facility/developmentally disabled habilitative or an intermediate
30 care facility/developmentally disabled—nursing shall be provided
31 by the department to the appropriate regional center pursuant to
32 Chapter 5 (commencing with Section 4620) of Division 4.5 of the
33 Welfare and Institutions Code.

34 ~~(e)~~

35 (g) All inspection reports and lists of deficiencies shall be open
36 to public inspection when the department has received verification
37 that the health facility has received the report from the department.
38 All plans of correction shall be open to public inspection upon
39 receipt by the department.

40 ~~(f)~~

(h) In no event shall the act of providing a plan of correction, the content of the plan of correction, or the execution of a plan of correction, be used in any legal action or administrative proceeding as an admission within the meaning of Sections 1220 to 1227, inclusive, of the Evidence Code against the health facility, its licensee, or its personnel.

~~(g)–~~

(i) For purposes of this section, ~~“significant hazard”~~ article, ~~“immediate jeopardy”~~ means a ~~condition as a result of which a patient has suffered, or is likely to suffer, situation in which the health facility’s noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a patient.~~

(j) *The amendments to this section enacted by Senate Bill 1005 during the 2002–03 Regular Session shall not be construed to require the retrofitting of a hospital building built prior to July 1, 2004, to meet seismic safety standards in effect on that date.*

SEC. 5. Section 1280.1 of the Health and Safety Code is amended to read:

1280.1. (a) If a licensee of a health facility licensed under subdivision (a), (b), or (f) of Section 1250 fails to correct a deficiency *that poses an immediate jeopardy to a patient or patients* within the lesser of 180 days or the time specified in a plan of correction or within an extension of that time pursuant to Section 1280, the department ~~may~~ *shall* assess against the licensee a civil penalty ~~in an amount not to exceed of fifty dollars (\$50) per patient affected by the deficiency for each day that the deficiency continues beyond the date specified for correction. Civil penalties shall not be assessed commencing with the day the health facility certifies in writing that the deficiency has been corrected and the department has verified the correction through reinspection or through documentation if the department determines that documentation alone establishes correction.~~ For purposes of this section, failure to correct a deficiency may be substantiated by a subsequent validated complaint about a condition similar to the one that gave rise to the deficiency. ~~The civil penalties shall be assessed only for deficiencies that pose a significant hazard, as defined in subdivision (g) of Section 1280, to the health or safety of patients. If~~ A health facility’s failure to correct a specific

1 *deficiency may also be determined upon a reinspection of the*
2 *health facility by the department.*

3 (b) *If the licensee disputes a determination by the department*
4 *regarding alleged failure to correct a deficiency or regarding the*
5 *reasonableness of the proposed deadline for correction, the*
6 *licensee may, within 10 days of the department's determination,*
7 *request a hearing pursuant to Section 100171. Penalties shall be*
8 *paid when appeals pursuant to those provisions have been*
9 *exhausted.*

10 ~~(b)~~
11 (c) *This section shall not apply to a deficiency for which a*
12 *health facility was cited prior to January July 1, 1994.*

13 ~~(e) A licensee may appeal a civil penalty assessed pursuant to~~
14 ~~this section. If a civil penalty is appealed pursuant to this section,~~
15 ~~proceedings shall be conducted in accordance with Section~~
16 ~~100171.~~

17 ~~(d) Civil penalties collected pursuant to this section shall be~~
18 ~~used for the purpose of enforcement of this chapter.~~

19 (d) *The amendments to this section enacted by Senate Bill 1005*
20 *during the 2002–03 Regular Session shall not be construed to*
21 *require the retrofitting of a hospital building built prior to July 1,*
22 *2004, to meet seismic safety standards in effect on that date.*

23 SEC. 6. Section 1280.2 of the Health and Safety Code is
24 amended to read:

25 1280.2. (a) No deficiency cited pursuant to paragraph (2) of
26 subdivision (b) of Section 1280 or Section 1280.1 shall be for the
27 failure of a *health* facility to meet the requirements of the
28 California Building Standards Code if, as of January 1, 1994, the
29 hospital building was approved under Chapter 12.5 (commencing
30 with Section 15000) of Division 12.5, or if the hospital building
31 was exempt from that approval under any other provision of law
32 in effect on that date.

33 (b) It is the intent of the Legislature that neither the
34 amendments made to Section 1280 by Chapter 1152 of the Statutes
35 of 1993, nor Section 1280.1 shall be construed to require the
36 retrofitting of hospital buildings built prior to January 1, 2004,
37 1994, to meet seismic standards in effect on that date.

38 SEC. 7. Notwithstanding any other provision of law, the
39 activities of the State Department of Health Services in

1 implementing this act shall be funded through fees collected
2 pursuant to Section 1266 of the Health and Safety Code.

3 SEC. 8. This act shall become operative on July 1, 2004.

4 SEC. 9. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

13 _____
14 CORRECTIONS

15 Text — Pages 9.

16 _____
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